

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL J. MIHORA,

Plaintiff-Appellee,

V

PCS GREENVILLE, P.C., AMINO TEK  
SERVICES, PAIN CENTERS and DR. JEFFREY  
ASKANAZI,

Defendants-Appellants.

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UNPUBLISHED

October 30, 2001

No. 222729

Genesee Circuit Court

LC No. 99-064808-CK

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right from an order denying their motion to set aside a default and default judgment. We affirm.

We review a trial court's decision whether to set aside a default judgment for a clear abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). "An abuse of discretion involves far more than a difference in judicial opinion." *Id.* Such an abuse occurs only when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or an exercise of passion or bias. *Id.*

Defendants argue that the trial court erred in denying their motion because the court lacked personal jurisdiction over them due to improper service. A motion to set aside a default or default judgment shall be granted if the court did not obtain jurisdiction over the defendant. MCR 2.603(D)(1). A trial court lacks jurisdiction over a defendant where service of process is defective. *Alycekay Co v Hasko Construction Co*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989). The defendant bears the burden of proving that he was not served with process. *Id.*

In the case at bar, defendants were served in accordance with the trial court's orders of substituted service. Defendants assert that substitute service was inappropriate because plaintiffs could have served defendants' attorney, who had offered to receive service for defendants in the past. However, the record reveals that defense counsel's offer to receive service involved only two of the four defendants, and was made in connection with a previous case, not the instant case. More significantly, the question is whether the service that was accomplished was proper.

If service cannot be accomplished in the manner provided in the court rules, the court has discretion to authorize an alternate form of service in any manner, as long as it is “reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.” MCR 2.105(I)(1).

Here, the process server submitted an affidavit indicating that he was unable to serve Dr. Askanazi at his home, despite numerous attempts. The process server also indicated that Dr. Askanazi’s neighbors and the post office both reported that the address was still accurate. Accordingly, the trial court authorized alternate service, both by posting and by first-class mail. Although Dr. Askanazi claims that he moved from the address several months before plaintiff filed his action, defendants were unable to explain how they received the default judgment, but not the summons and complaint, which were served at the same address. Moreover, each of the four defendants were served at their separate addresses, making it unlikely that none of them received a copy of the summons and complaint. Because we conclude that the trial court’s orders authorizing substituted service were proper and because defendants were served in accordance with those orders, the trial court did not clearly abuse its discretion in denying defendants’ motion to set aside the default and default judgment based on lack of jurisdiction.

Defendants also argue that the trial court erred in denying their motion where there was good cause to set the default judgment aside and they had a meritorious defense. Where a court has jurisdiction over a defendant, a motion to set aside a default or default judgment should be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1); *Alken-Ziegler, Inc, supra* at 223. Good cause sufficient to warrant setting aside a default or a default judgment may be shown by: (1) a procedural defect or irregularity, or (2) a reasonable excuse for the failure to comply with requirements that created the default. *Alken-Ziegler, Inc, supra* at 233.

The “good cause” on which defendants rely consists of their claim that service was improper and that they had no notice of the proceedings until they were served with the default judgment. Consistent with the foregoing discussion, however, we conclude that the trial court did not abuse its discretion in determining that the good cause requirement was not satisfied. Because defendants failed to satisfy the good cause requirement, it is unnecessary to determine whether defendants have established a meritorious defense. *Zaiter v Riverfront Complex Ltd*, 463 Mich 544, 553 n 9; 620 NW2d 646 (2001)

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot